IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 4897 of 1997

Shri Bankimchandra Makanabhai
Patel
Railway Qrtr. 51/8, Trikamdas
Kandivali (W), Mumbai 400 061 ..Petitioner

vs.

1. State of Maharashtra
through Secretary Tribal
Development Department
Mantralaya, Mumbai 400 032

2. Chairman
Committee for Scrutiny and
Verification of Tribe Claims
28, Queen’s Garden
Pune s411 001

3. Principal
V.J.T.I., Matunga
Mumbai 400 019

4. Directorate of Technical
Education, 3 Mahapalika Marg
Maharashtra State, Mumbai ..Respondents

Shri R.K.Mendadkar for petitioner
Shri C.R.Sonawane, A.G.P. for respondents.

**CORAM: A.P.SHAH AND**
**S.C.DHARMADHIKARI JJ**
**14th OCTOBER, 2004**

**ORAL JUDGMENT (Per A.P.Shah J.)**

1. Heard Advocates.

2. The petitioner claims to belong to Dhodia Tribe which is recognised as Scheduled Tribe under the Presidential Notification passed under Article 342 of the Constitution of India. As the petitioner

intended to prosecute further studies in engineering course in a seat reserved for Scheduled Tribe he made an application to respondent no.2 i.e. Caste Certificate Verification Committee, Pune Division, Pune and furnished various documents in support of his caste claim as belonging to Dhodia Scheduled Tribe. Thereafter the petitioner was also called for personal hearing which the petitioner and his father attended.

3. It appears that the petitioner's family hail from village Pati in Balsad District which is now part of Gujarat State. The petitioner's father migrated to Mumbai in 1972 seeking employment and the petitioner was born and brought up in Mumbai. The Scrutiny Committee has invalidated the caste certificate of the petitioner solely on the ground that the petitioner is migrant and, therefore, he is not entitled for reservation benefits for backward class in the State of Maharashtra. The Committee was of the view that on the date of notification under Article 342 the domicile of the petitioner's father was not in Maharashtra and, therefore, the petitioner is not entitled to get the benefits of scheduled tribe in Maharashtra. This finding of the Committee is based on the decision of the Supreme Court in the case of Action

Committee on issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and Anr. Vs. Union of India and another; (1994) 5 SCC 244.

4. As far as the petitioner is concerned he claims to belong to Dhodia Scheduled Tribe which has been classified as Scheduled Tribe vide Presidential Order dated 10th August 1950. The petitioner's father and grand father were born in Pati in Balsad District. Balsad District was part of the erstwhile State of Bombay. Hence if the date of Presidential Order is taken into account the same will be applicable to the then State of Bombay which includes Pati in Balsad district. The petitioner's father would thus be governed by the said order on the hypothesis that he was resident of the then State of Bombay. Bifurcation of the State of Bombay in Gujarat and Maharashtra was brought about with effect from 1st May, 1960. In the case of Action Committee (supra) the Supreme Court observed thus:

> "4. The petitioners herein are aggrieved because the State of Maharashtra has denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes

specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other States who have migrated from other States to the State of Maharashtra. These benefits and privileges are denied on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless the person concerned is shown to be a permanent resident of the State of Maharashtra on 10.8.1950 in the case of Scheduled Castes and 6.9.1950 in the case of Scheduled Tribes. These are the dates on which the President first promulgated the Constitution (Scheduled Caste) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. The petitioners, therefore, contend that the denial of the benefits and the privileges by the State of Maharashtra is violative of the fundamental rights conferred on citizens by

Articles 14, 15(1), 16(2) and 19 of the Constitution, besides being contrary to the letter and spirit of Articles 341 and 342 of the Constitution. The petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 would show the same castes and tribes specified in respect of more than one state. Those belonging to the Scheduled Castes and the Scheduled Tribes, wherever situate, are economically backward. Besides on account of social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled to migrate from one State to another in search of livelihood or to escape the wrath of their operators. Earlier they did not experience any difficulty in obtaining caste/tribe certificates to secure benefits available to the Scheduled Castes and Scheduled Tribes in the State of Maharashtra. The situation, however, changed drastically after the Government of India issued a communication addressed to

Chief Secretaries to all State Governments/Union Territories on 22.3.1977.

6. The Government of India in the Ministry of Home Affairs noticed that certificates belonging to a particulars scheduled caste/Scheduled Tribe were not issued strictly in accordance with the principle governing the issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term "residence" on the part of the authorities concerned. With a view to clarifying the legal position the communication of 22.3.1977 came to be issued. The relevant part of that communication may be reproduced for ready reference.

"As required under Articles 341 and 342 of the Constitution, the President has with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union

Territory from time to time. The inter State area restrictions shave been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Castes or Scheduled Tribe Status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not both be treated as belong to Scheduled Caste/Tribe or vice versa. Thus, the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order Scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode lat the time of the notification of the Presidential Order applicable in this case, say for example, to earn a living or seek education, etc. can also be regarded as Scheduled Caste or a Scheduled Tribe, as

the case may be, if his caste/tribe has been specified din that order in relation to his State/Union Territory.l But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order,." The communication further states that with a view to ensuing the veracity of permanent residence of a person and that of the Caste/tribe to which he claims to belong, the Government of India made a special provision in the proforma prescribed for the issue of such certificates. In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms) by a letter dated 6.8.1975 indicated the authorities locality wise who should issue the certificates. The Communication then proceeds to add :

"Thus the Revenue Authority of one district would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/Union Territory issue

> such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/Union Territory" This was emphasised because only the revenue authorities of the locality of which individual is the resident alone would have access to revenue records to be in a position to make reliable enquiries before the issuance of the certificate. In regard to persons born after the date of notification of the relevant Presidential Order, the communication states that the place of residency for the purpose of acquiring Scheduled Castes or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe"

5. The above observations make it clear that the relevant date for considering the benefits of Presidential Order is the date of the Presidential Order. Even the communication dated 22nd March, 1977 referred in the said decision of the Supreme

Court emphasises that in regard to the person born after the date of notification of the relevant Presidential Order the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of notification of the concerned Presidential Order under which they claim to belong to such caste/tribe.

6. In the above circumstances it is impossible to sustain the order of the Scrutiny Committee. Hence, we quash and set aside the impugned order dated 25th August, 1997. The Scrutiny Committee is directed to consider the caste claim of the petitioner on merits without raising objection that the petitioner's family was migrated from Balsad. The Scrutiny Committee is directed to decide the caste claim as expeditiously as possible and in any event within a period of six months from today. The petitioner is directed to appear before the committee on 1st November, 2004.

7. All contentions of the parties on merits are left open to the parties.

8. Rule is made absolute accordingly with no order as to costs.

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**Date of Judgment:** 14th October, 2004

**For approval and signature of:**

**The Hon'ble Mr.A.P.SHAH J.**

**The Hon'ble Mr.S.C.DHARMADHIKARI J.**

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?

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